

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, }  
Plaintiff, } No. CR-S-01-0346-JLQ  
vs. } ORDER RE: SENTENCING  
DAVID ALLAN VAN VELZER, JR., } MEMORANDA  
Defendant. }

On November 29, 2006, the Defendant filed his Supplemental Sentencing Memorandum and on November 30, 2006, the Government filed its Sentencing Memorandum.

In the Defendant's Supplemental Sentencing Memorandum, the Defendant contends that by reason of *United States v. Booker*, 543 U.S. 220 (2005) the court is limited in calculating the Defendant's Sentencing Guidelines to those matters specifically found by the jury. That contention is contrary to the "remedial portion" of *Booker* found in Justice Breyer's majority opinion (pps. 245-271) wherein the court determined that the Sentencing Guidelines were advisory to the sentencing court only and thus the Sixth Amendment was not implicated. The progeny of *Booker* therefore approve of fact finding by the sentencing judge in determining the Sentencing Guidelines range.

If the Defendant or appointed standby counsel have any authority that supports a contention that this court may not utilize its prior fact findings in determining the Sentencing Guideline Range, such authority shall be furnished to the court forthwith. At a minimum, the Defendant and counsel for the Plaintiff shall be prepared to cite any applicable authority to the court on December 5, 2006.

6 The Clerk of this court shall enter this Order and forward copies to counsel.

**DATED** this 30th day of November 2006.

s/ Justin L. Quackenbush

**JUSTIN L. QUACKENBUSH  
SENIOR UNITED STATES DISTRICT JUDGE**